

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

THE ART INSTITUTE OF PHILADELPHIA
LLC, *et al.*,
Debtors.

Chapter 7
Case No. 18-11535 (LSS)

(Jointly Administered)

GEORGE L. MILLER, Chapter 7 Trustee,
Plaintiff,

– against –

TODD S. NELSON, JOHN R. McKERNAN,
SAMUEL C. COWLEY, EDWARD WEST,
MARK A. McEACHEN, FRANK JALUFKA,
J. DEVITT KRAMER, MARK NOVAD, JOHN
DANIELSON, AND MICK BEEKHUIZEN,
Defendants.

Adv. Proc. No. 20-50627 (LSS)

**MOTION OF DEFENDANTS JOHN R. MCKERNAN, EDWARD WEST, AND
MICK BEEKHUIZEN TO DISMISS TRUSTEE’S COMPLAINT**

Defendants John R. McKernan, Edward West, and Mick Beekhuizen (“Defendants”), by and through their undersigned counsel, hereby move to dismiss with prejudice Trustee’s Complaint dated June 17, 2020. In support of the Motion to Dismiss, Defendants rely upon the accompanying Memorandum in Support of Motion of Defendants John R. McKernan, Edward West, and Mick Beekhuizen to Dismiss Trustee’s Complaint, the Declaration of Michael L. Kichline dated September 14, 2020, with attached exhibits, and all pleadings filed with the Court in this matter. Defendants request that the Court take judicial notice of these records.

As discussed more fully in the accompanying Opening Brief, the Trustee’s Complaint should be dismissed because:

1. The claims asserted in Counts I–III of the Trustee’s Complaint are barred by the doctrines of res judicata, collateral estoppel, and judicial estoppel;

2. The claims asserted in Counts I–III of the Trustee’s Complaint are barred by waiver or abandonment;

3. The claims asserted in Counts I–III of the Trustee’s Complaint are barred by the applicable statute of limitations;

4. All of the Trustee’s claims are legally defective and fail to meet the pleading requirements of the Federal and Bankruptcy Rules; and

5. Counts IV–X against Defendant Mick Beekhuizen are untimely and without merit.

WHEREFORE, Defendants respectfully request that the Court grant the motion and enter an order dismissing the Trustee’s Complaint with prejudice and granting any such other and further relief as the Court deems just and proper.

Dated: September 14, 2020

Wilmington, Delaware

Respectfully submitted,

RICHARDS, LAYTON & FINGER, P.A.

By: /s/ Marcos A. Ramos

Marcos A. Ramos (No. 4450)

Brett M. Haywood (No. 6166)

One Rodney Square

920 North King Street

Wilmington, DE 19801

Telephone: (302) 651-7700

Facsimile: (302) 651-7701

ramos@rlf.com

haywood@rlf.com

Michael L. Kichline, *pro hac vice*
Carla G. Graff, *pro hac vice*
DECHERT LLP
2929 Arch Street
Philadelphia, PA 19102
Telephone: (215) 994-4000
Facsimile: (215) 994-2222
michael.kichline@dechert.com
carla.graff@dechert.com

Paul C. Kingsbery, *pro hac vice*
DECHERT LLP
1095 Avenue of the Americas
Telephone: (212) 641-6553
Facsimile: (212) 314-0082
paul.kingsbery@dechert.com

*Counsel for Defendants John R.
McKernan, Edward West, and Mick
Beekhuizen*